

EXHIBIT A

Transcript of Steven J. Shapiro, Ph.D
Conducted on October 30, 2018

1 (1 to 4)

<p>1 UNITED STATES DISTRICT COURT</p> <p>2 EASTERN DISTRICT OF NEW YORK</p> <p>3</p> <p>4 -----x</p> <p>5 STEVEN B. BARGER,</p> <p>6 Plaintiff,</p> <p>7 v. Civil Action No.</p> <p>8 FIRST DATA 1:17-cv-04869</p> <p>9 CORPORATION, et al,</p> <p>10 Defendant.</p> <p>11 -----x</p> <p>12</p> <p>13 Deposition of</p> <p>14 STEVEN J. SHAPIRO, PH.D.</p> <p>15 New York, New York</p> <p>16 Tuesday, October 30, 2018</p> <p>17 9:32 a.m.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Job No.: 213997</p> <p>24 Pages: 1 - 44</p> <p>25 Reported By: Nancy Mahoney, CCR/RPR</p>	<p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF PLAINTIFF BARGER:</p> <p>3 SHAWN SHEARER, ESQUIRE</p> <p>4 shawn@shearerlaw.pro</p> <p>5 LAW OFFICES OF SHAWN SHEARER</p> <p>6 3839 McKinney Avenue</p> <p>7 Suite #155-254</p> <p>8 Dallas, Texas 75204</p> <p>9 972.803.4499</p> <p>10</p> <p>11 ON BEHALF OF DEFENDANT FIRST DATA:</p> <p>12 GARY B. EIDELMAN, ESQUIRE</p> <p>13 gary.eidelman@saul.com</p> <p>14 MICHAEL P. CIANFICHI, ESQUIRE</p> <p>15 michael.cianfichi@saul.com</p> <p>16 SAUL EWING ARNSTEIN & LEHR LLP</p> <p>17 Lockwood Place</p> <p>18 500 East Pratt Street</p> <p>19 Baltimore, MD 21202</p> <p>20 410.332.8600</p> <p>21</p> <p>22 ALSO PRESENT:</p> <p>23 Joseph T. Gardemal, III</p> <p>24</p> <p>25</p>
<p>1 Deposition of STEVEN J. SHAPIRO, PH.D., held at</p> <p>2 the offices of:</p> <p>3</p> <p>4</p> <p>5 Saul Ewing Arnstein & Lehr LLP</p> <p>6 1270 Avenue of the Americas</p> <p>7 New York, New York 10020</p> <p>8 212.980.7200</p> <p>9</p> <p>10</p> <p>11</p> <p>12 Pursuant to agreement, before Nancy Mahoney,</p> <p>13 Notary Public in and for the state of New York.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 C O N T E N T S</p> <p>2 EXAMINATION OF STEVEN J. SHAPIRO, PH.D. PAGE</p> <p>3 By Mr. Eidelman 5</p> <p>4</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7 (Attached to transcript)</p> <p>8</p> <p>9 STEVEN J. SHAPIRO, PH.D. PAGE</p> <p>10</p> <p>11 Exhibit 1 Expert Report of Steven J. 6</p> <p>12 Shapiro, Ph.D., Bates stamp SBB-002084</p> <p>13 through 2132</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Transcript of Steven J. Shapiro, Ph.D

2 (5 to 8)

Conducted on October 30, 2018

<p>1 PROCEEDINGS</p> <p>2 STEVEN J. SHAPIRO, PH.D.,</p> <p>3 after having been first duly sworn or affirmed to</p> <p>4 testify to the truth, was examined and</p> <p>5 testified as follows:</p> <p>6 EXAMINATION BY COUNSEL FOR THE DEFENDANT</p> <p>7 FIRST DATA BY GARY EIDELMAN:</p> <p>8 Q Good morning, Dr. Shapiro. Can you please</p> <p>9 state your full name for the record.</p> <p>10 A It's Steven, first name Steven with a v,</p> <p>11 middle initial J, last name Shapiro.</p> <p>12 Q Good morning again, Dr. Shapiro. My name</p> <p>13 is Gary Eidelman. I'm a lawyer at Saul Ewing</p> <p>14 Arnstein & Lehr. We had an opportunity to greet</p> <p>15 each other before the deposition began this</p> <p>16 morning.</p> <p>17 Along with me today is my colleague Mike</p> <p>18 Cianfichi from Saul Ewing, and also Joseph T.</p> <p>19 Gardernal, III who is our expert who is with</p> <p>20 Alvarez & Marsal, and Shawn Shearer is here as</p> <p>21 well for Mr. Barger.</p> <p>22 Since you've likely had your deposition</p> <p>23 taken many times before, is it okay if I dispense</p> <p>24 with the rules or do you need me to give them to</p> <p>25 you?</p>	<p>5</p> <p>1 this.</p> <p>2 Q Oh, you don't? Then we should get that.</p> <p>3 (A recess was taken.)</p> <p>4 BY MR. EIDELMAN:</p> <p>5 Q Am I correct that in Exhibit 1 that Bates</p> <p>6 002111 to 2127 is your CV?</p> <p>7 A Yes.</p> <p>8 Q And that 2128 to 2132 is your schedule of</p> <p>9 testimony from January 2014 to the present?</p> <p>10 A Yes.</p> <p>11 Q Very good. Thank you.</p> <p>12 Dr. Shapiro, when were you retained by the</p> <p>13 plaintiff to produce an expert report in this</p> <p>14 matter?</p> <p>15 A I don't have my records in front of me,</p> <p>16 but, to the best of my recollection, it was in</p> <p>17 early September of this year.</p> <p>18 Q Did you charge the plaintiff for your</p> <p>19 services?</p> <p>20 A Yes, I did.</p> <p>21 Q And what were your fees?</p> <p>22 A \$400 per hour for the time involved in</p> <p>23 preparing a report.</p> <p>24 Q How many hours did you spend?</p> <p>25 A Roughly -- again, I don't have my billing</p>
<p>6</p> <p>1 A I think I'll be fine on that.</p> <p>2 Q Very good. I appreciate that.</p> <p>3 (Exhibit 1 Expert Report of Steven J.</p> <p>4 Shapiro, Ph.D., Bates stamp SBB-002084 through</p> <p>5 2132 marked for identification and attached to the</p> <p>6 transcript.)</p> <p>7 Q Showing you what's been marked as</p> <p>8 Deposition Exhibit 1, Shapiro Exhibit 1. Can you</p> <p>9 identify that for me, please.</p> <p>10 A Yes. This is the report that I prepared</p> <p>11 in this case on September 28th of this year.</p> <p>12 Q Am I correct that this document has a</p> <p>13 number of Bates numbers in actually all four</p> <p>14 corners, that Bates numbers SBB-002084 through</p> <p>15 208 -- excuse me, 2090 constitute your opinion.</p> <p>16 Is that right?</p> <p>17 A Well, it would be in terms of the text.</p> <p>18 Q In terms of the text, correct.</p> <p>19 A It does not include exhibits.</p> <p>20 Q Correct. And then the exhibits begin on</p> <p>21 SBB-002091, and they continue through 2110?</p> <p>22 A That's correct.</p> <p>23 Q And then following that, beginning on</p> <p>24 002111 continuing through 2127 is your CV.</p> <p>25 A I do not have a copy of my CV attached to</p>	<p>7</p> <p>1 records in front of me but roughly six hours.</p> <p>2 Q So the work product that's in front of me</p> <p>3 cost approximately \$2,400?</p> <p>4 A I believe that's correct.</p> <p>5 Q Were you assisted in preparing this report</p> <p>6 by anyone?</p> <p>7 A No.</p> <p>8 Q On page 2 of your report and page 3 of</p> <p>9 your report corresponding to Bates 2085 and 2086,</p> <p>10 there is the sources that you relied upon.</p> <p>11 Am I correct?</p> <p>12 A Yes.</p> <p>13 Q Were any other materials considered by you</p> <p>14 in preparing this report?</p> <p>15 A Other than the documents listed on Bates</p> <p>16 002085 and 002086, there are other secondary data</p> <p>17 sources that I also referenced and they are</p> <p>18 mentioned in footnotes -- or cited in footnotes, I</p> <p>19 should say, throughout the report.</p> <p>20 Q Did you speak to the plaintiff,</p> <p>21 Mr. Barger, in connection with preparing the</p> <p>22 report?</p> <p>23 A No.</p> <p>24 Q Did you speak with Mr. Shearer in</p> <p>25 connection with preparing the report?</p>

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Transcript of Steven J. Shapiro, Ph.D

3 (9 to 12)

Conducted on October 30, 2018

<p>9</p> <p>1 A I believe so, yes.</p> <p>2 Q Did he provide you with any factual</p> <p>3 information for you to use in preparing your</p> <p>4 report?</p> <p>5 A The only factual information I believe</p> <p>6 would have been things such as date of birth,</p> <p>7 Mr. Barger's background, and then the documents</p> <p>8 and bullet points on pages 00 -- sorry, Bates 0 --</p> <p>9 let's try again, Bates 002085 through 002086 were</p> <p>10 provided to me by Mr. Shearer.</p> <p>11 Q Did you review the plaintiff's testimony</p> <p>12 from his deposition in this case?</p> <p>13 A No.</p> <p>14 Q Why not?</p> <p>15 A It was not provided to me.</p> <p>16 Q Is that something that you normally ask</p> <p>17 for?</p> <p>18 A What I normally ask for would be documents</p> <p>19 that would be relevant to preparing an analysis of</p> <p>20 lost compensation. In a matter like this,</p> <p>21 sometimes I'm provided depositions of the</p> <p>22 plaintiff; other times I'm not.</p> <p>23 Q But you didn't ask for the deposition of</p> <p>24 the plaintiff?</p> <p>25 A No.</p>	<p>11</p> <p>1 example, discounting future losses to present</p> <p>2 value depending on legal standards in the</p> <p>3 jurisdiction in which one is doing an analysis or</p> <p>4 it might be interest accruing to past losses, and</p> <p>5 that's in order to get a present value of the</p> <p>6 losses.</p> <p>7 Since typically losses consist of a past</p> <p>8 income stream and a future income stream,</p> <p>9 typically in a matter, damages would be the</p> <p>10 present value of the income stream but for the</p> <p>11 event -- I'll use the phrase "event" that's the</p> <p>12 subject of litigation, less any actual income</p> <p>13 stream that's being earned since that time, if</p> <p>14 there is such an income stream.</p> <p>15 Q Do you believe that one needs to be an</p> <p>16 expert witness in order to calculate present value</p> <p>17 of income?</p> <p>18 A Does one need to be an expert? Well,</p> <p>19 that's a hard question to answer. I mean -- and</p> <p>20 the reason I say that is I think relying on -- in</p> <p>21 a court setting relying on lay people to do it,</p> <p>22 number one. Number one, even though yes, it does</p> <p>23 involve algebra and arithmetic -- and I'll be the</p> <p>24 first to concede that point, which I realize</p> <p>25 you're kind of getting to in your question --</p>
<p>10</p> <p>1 Q What professional standards did you follow</p> <p>2 in performing the production of this expert</p> <p>3 report?</p> <p>4 A Best way I could put it is just following</p> <p>5 standards that would be used by an economist</p> <p>6 preparing an analysis of lost compensation.</p> <p>7 Q I read in your introduction to your report</p> <p>8 that you are the past president of the National</p> <p>9 Association of Forensic Economists, or NAFE.</p> <p>10 A Yes.</p> <p>11 Q Is that right?</p> <p>12 A That is correct.</p> <p>13 Q And that you are still an executive editor</p> <p>14 of the Journal of Forensic Economics?</p> <p>15 A That's correct.</p> <p>16 Q What is forensic economics?</p> <p>17 A Forensic economics would be the</p> <p>18 application of economics to matters involving</p> <p>19 litigation.</p> <p>20 Q And in utilizing those procedures or</p> <p>21 processes, are there certain methods and protocols</p> <p>22 that are followed in conducting such analyses?</p> <p>23 A Well, I think in general terms there are</p> <p>24 in terms of -- based on peer-reviewed literature</p> <p>25 in the field that one would be normally, for</p>	<p>12</p> <p>1 nonetheless, I have -- I have seen lawyers, for</p> <p>2 example, do the calculations themselves and</p> <p>3 dispense with an expert, and the calculations can</p> <p>4 be shaky; there could be issues with what's</p> <p>5 assumed in terms of the particular investment</p> <p>6 vehicle as well.</p> <p>7 Q Okay. Thank you. Thank you.</p> <p>8 We went through it earlier that your CV --</p> <p>9 excuse me, your expert report also includes a</p> <p>10 table of the cases that you've testified in</p> <p>11 from -- effective January of 2014.</p> <p>12 Have any opponents in any litigation</p> <p>13 matter in which you have worked sought to have</p> <p>14 your opinions excluded?</p> <p>15 A Yes.</p> <p>16 Q Can you name those cases for me? Are they</p> <p>17 on this chart which is the tail end of your expert</p> <p>18 report beginning on 2128?</p> <p>19 A I do not see any of them on here because</p> <p>20 it would have been prior to 2014.</p> <p>21 Q What was that case or cases, if you</p> <p>22 recall?</p> <p>23 A One was Simmons versus Simmons, a divorce</p> <p>24 action in Connecticut. I was retained by</p> <p>25 Connecticut counsel to -- I was asked to generate</p>

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5 (17 to 20)

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<p>17</p> <p>1 A I believe that I was typing away and that</p> <p>2 "and" should have been a period before "health</p> <p>3 benefits."</p> <p>4 Q Before health benefits or after health</p> <p>5 benefits?</p> <p>6 A Well, compensation would have included</p> <p>7 base salary, annual bonuses and health benefits,</p> <p>8 period.</p> <p>9 Q And health benefits, period. So the "and"</p> <p>10 can go before there. Got it.</p> <p>11 Where did you obtain the information</p> <p>12 regarding Mr. Barger's base salary in preparing</p> <p>13 your report?</p> <p>14 A I believe that would have been -- that</p> <p>15 would have been from communications from</p> <p>16 Mr. Shearer, and I believe that was also addressed</p> <p>17 in the June 12th, 2014 letter from Joe Plumeri of</p> <p>18 First Data Corporation which was basically the</p> <p>19 offer of employment. I believe that may have been</p> <p>20 also on the pay stubs that I referenced also. I</p> <p>21 don't have them in front of me.</p> <p>22 Q And so you were calculating your damages</p> <p>23 based on compensation which included base salary,</p> <p>24 annual bonuses. Did you obtain annual bonus</p> <p>25 information from the same series of documents,</p>	<p>19</p> <p>1 calculate the lost value of the health benefits</p> <p>2 that Mr. Barger supposedly was receiving, correct?</p> <p>3 A Yes.</p> <p>4 Q And, in fact, you used an average of</p> <p>5 health benefits based on a report which you list</p> <p>6 in Exhibit 5 -- excuse me, in footnote 5, right?</p> <p>7 A That's correct.</p> <p>8 Q Those are not the actual health benefits</p> <p>9 that would have been incurred at First Data</p> <p>10 anyway, right; this is just an average number that</p> <p>11 you used?</p> <p>12 A That's correct.</p> <p>13 Q If you had believed that Mr. Barger was in</p> <p>14 fact getting health benefits from First Data, why</p> <p>15 would you have not asked what the value of those</p> <p>16 benefits were in order to create an accurate</p> <p>17 report?</p> <p>18 A If I could get those values, I would have</p> <p>19 used them. It's been my experience, though, in</p> <p>20 doing litigation many times the employer cost of</p> <p>21 those benefits isn't available when I'm preparing</p> <p>22 a report. If it were, I would rely on it.</p> <p>23 Q Well, did you ask anyone for them?</p> <p>24 A I just asked Mr. Shearer for whatever</p> <p>25 documents related to compensation that he had that</p>
<p>18</p> <p>1 both the offer letter as well as the pay</p> <p>2 statements?</p> <p>3 A Pay statements and also there were</p> <p>4 summaries that were also -- there was a</p> <p>5 compensation summary as well as summaries that</p> <p>6 showed stock grants to Mr. Barger as well.</p> <p>7 Q You also indicate that you were</p> <p>8 calculating damages based on lost health benefits?</p> <p>9 A Yes.</p> <p>10 Q Where did you obtain information that</p> <p>11 Mr. Barger was obtaining health benefits from</p> <p>12 First Data?</p> <p>13 A I believe I obtained that from</p> <p>14 Mr. Shearer. I don't remember if that's listed in</p> <p>15 the compensation summary or not.</p> <p>16 Q Are you aware that Mr. Barger elected not</p> <p>17 to take health benefits while employed at First</p> <p>18 Data?</p> <p>19 A No, I was not.</p> <p>20 Q Would that change your calculations if it</p> <p>21 was determined that Mr. Barger had elected not to</p> <p>22 take health benefits from First Data?</p> <p>23 A As I'm sitting here right now, I don't</p> <p>24 know the answer to that.</p> <p>25 Q Well, you calculated -- in your report you</p>	<p>20</p> <p>1 had been produced in the case.</p> <p>2 Q Did Mr. Shearer tell you that Mr. Barger</p> <p>3 was getting health benefits from First Data?</p> <p>4 A Yes.</p> <p>5 Q Would it have been helpful for you to know</p> <p>6 that Mr. Barger had elected not to take health</p> <p>7 insurance benefits from First Data in preparing</p> <p>8 your report of alleged damages that he suffered?</p> <p>9 A Yes.</p> <p>10 Q If Mr. Barger had not in fact taken health</p> <p>11 benefits, am I correct that the calculation of</p> <p>12 health benefits that you included in your expert</p> <p>13 report would be valued at zero?</p> <p>14 A That's correct.</p> <p>15 Q Going back to page 3 of your expert</p> <p>16 report, in the what I think is now the second full</p> <p>17 paragraph under Paragraph 3a of Damages, Lost</p> <p>18 Compensation, you wrote, "I have prepared</p> <p>19 calculations of Mr. Barger's losses under the</p> <p>20 separate assumptions that at the time of</p> <p>21 termination he would have worked an additional</p> <p>22 five years and that he would have worked an</p> <p>23 additional ten years at First Data."</p> <p>24 Did I read that correctly?</p> <p>25 A That's correct.</p>

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6 (21 to 24)

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<p>21</p> <p>1 Q What is your basis for determining that</p> <p>2 Mr. Barger would have worked for an additional</p> <p>3 five years?</p> <p>4 A I was asked to assume that in preparing my</p> <p>5 report. When I say assume that, assume that range</p> <p>6 of years going forward from his termination date.</p> <p>7 Q So you were told to assume two periods of</p> <p>8 time, that he would have worked for five years or</p> <p>9 that he would have worked for ten years?</p> <p>10 A That's correct.</p> <p>11 Q And who told you to assume that?</p> <p>12 A Mr. Shearer.</p> <p>13 Q Did you consider any other periods of time</p> <p>14 to do your calculation? Why not 20 years?</p> <p>15 A No, I did not.</p> <p>16 Q What documents did you review to support</p> <p>17 your opinion that Mr. Barger would have worked for</p> <p>18 another five years?</p> <p>19 A I did not review any documents.</p> <p>20 Q So I take it you that didn't review any</p> <p>21 documents to support your opinion that Mr. Barger</p> <p>22 would have worked for an additional ten years?</p> <p>23 A That's correct.</p> <p>24 Q Am I correct that in your analysis you are</p> <p>25 assuming that Mr. Barger who was 72-and-a-half</p>	<p>23</p> <p>1 look at average unemployment rates to more</p> <p>2 effectively calculate what the anticipated work</p> <p>3 period would have been for Mr. Barger?</p> <p>4 A I'm not sure what you mean by average</p> <p>5 unemployment rate. Average for whom?</p> <p>6 Q Unemployment tables dictating how long</p> <p>7 somebody is typically out of work for in that</p> <p>8 industry. Would that not have been an appropriate</p> <p>9 measure to look at in calculating the period of</p> <p>10 time that Mr. Barger may have suffered damages?</p> <p>11 A No, I don't believe so.</p> <p>12 Q Are you familiar with work life expectancy</p> <p>13 tables?</p> <p>14 A Yes, I am.</p> <p>15 Q Is that something that you use in your</p> <p>16 work?</p> <p>17 A I have used them in my work.</p> <p>18 Q Is that something that is used in</p> <p>19 accordance with the protocols of peer-reviewed</p> <p>20 literature?</p> <p>21 A In peer-reviewed literature they are used,</p> <p>22 although there are also experts who have problems</p> <p>23 with the work life expectancy tables.</p> <p>24 Q Do you have you problems with the work</p> <p>25 life expectancy tables?</p>
<p>22</p> <p>1 years at the time of termination would continue to</p> <p>2 work for First Data for an additional five years</p> <p>3 through age 77-and-a-half?</p> <p>4 A That's correct.</p> <p>5 Q Did you look at any empirical data or</p> <p>6 labor force-related documents to support this</p> <p>7 assumption that he would have worked for an</p> <p>8 additional five years?</p> <p>9 A No, I did not.</p> <p>10 Q Doesn't that mean that your damages</p> <p>11 analysis is purely speculative and unsupported but</p> <p>12 basically just a calculation on Mr. Shearer's</p> <p>13 order to you to calculate damages at five years</p> <p>14 and ten years?</p> <p>15 A I don't think it's speculative. I was</p> <p>16 asked to assume that. I don't know what</p> <p>17 additional evidence Mr. Shearer is going to have</p> <p>18 at trial concerning that.</p> <p>19 Q Well, what evidence he has at trial, would</p> <p>20 that affect your expert report? Would that affect</p> <p>21 your expert opinion if he presented other</p> <p>22 information at trial?</p> <p>23 A Well, it would affect the reasonableness</p> <p>24 of the range of years going forward.</p> <p>25 Q Would it have been appropriate for you to</p>	<p>24</p> <p>1 A No, I do not.</p> <p>2 Q Would it have been appropriate to use a</p> <p>3 work life expectancy table in this case for a</p> <p>4 plaintiff who was age 72-and-a-half at the time of</p> <p>5 termination in calculating damages?</p> <p>6 A I'm not sure about that because, again,</p> <p>7 that work life expectancy table assumes -- makes</p> <p>8 assumptions that an individual fits the average</p> <p>9 pattern for someone of that age group, A, being</p> <p>10 alive; and B, being part of the labor force. And</p> <p>11 it doesn't factor in, for example, motivation.</p> <p>12 I mean, Mr. Barger was not a young man</p> <p>13 when he took this job on, and if I went by work</p> <p>14 life expectancy tables, he's already above</p> <p>15 average, so to speak, in terms of taking on a</p> <p>16 responsible position like that at the age he did</p> <p>17 since he was -- you know, since he had not been</p> <p>18 there very long; he was roughly 70 years old when</p> <p>19 he started that job.</p> <p>20 Q So is it your testimony -- I want to</p> <p>21 understand your testimony. Is it your testimony</p> <p>22 because he was motivated to work that it would not</p> <p>23 have been appropriate to look at work life</p> <p>24 expectancy tables?</p> <p>25 A I'm just suggesting that work life</p>

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7 (25 to 28)

<p>25</p> <p>1 expectancy tables for someone who's motivated like 2 him, who has not retired, might understate -- 3 potentially understate his work life expectancy 4 going forward. 5 Q Would that be the case for somebody who 6 contracted cancer while he was employed at that 7 age? Wouldn't that mitigate towards using work 8 life expectancy tables for somebody who was not in 9 good health? 10 A For someone who was not in good health, I 11 would be very leery of using life expectancy 12 tables because, again, to impute the length of 13 time working would require medical expertise that 14 I don't have as an economist. 15 Q But it would be okay to just estimate 16 damages out to ten years for somebody who, you 17 know, had a bout of cancer and also had a previous 18 heart attack; it's appropriate in your estimation 19 to just calculate dates of five years and ten 20 years without relying on any empirical data? 21 A Yes, it is. I mean, again, I'm assuming 22 that Mr. Shearer will have other information that 23 I don't have that would support that. 24 Q So what other information would you need 25 in order to modify your report in any way that</p>	<p>27</p> <p>1 information is, and then I could make an 2 assessment of that. 3 Q If you would have considered that 4 Mr. Barger was terminated in a subsequent 5 reduction in force or that he was replaced, would 6 that impact your damages calculation? 7 A Well, if I made that assumption, yes, it 8 would. 9 Q It would shorten the periods of time for 10 which you calculated damages? 11 A If I made that assumption, it would, yes. 12 Q Did you consider Mr. Barger's medical 13 history when you terminated his work life -- when 14 you completed your calculations? 15 A No, I did not. 16 Q In fact, your work life expectancy wasn't 17 derived from a table but it was Mr. Shearer's 18 direction to you to use work life expectancy of 19 five years and work life expectancy of ten years? 20 A That's correct. 21 Q Could I have performed the analysis that 22 you did in calculating what Mr. Barger's damages 23 would have been at five years? 24 MR. SHEARER: Objection: 25 A If you followed all the steps here and I</p>
<p>26</p> <p>1 would otherwise help support your conclusions here 2 that Mr. Barger would have worked for an 3 additional five years or that he would have worked 4 for an additional ten years? What information 5 don't you have that you think is going to be 6 produced at trial? 7 A As I'm sitting here, I don't know the 8 answer to that. 9 Q Did you consider the risk or possibility 10 that Mr. Barger could have been terminated in a 11 subsequent reduction in force in calculating the 12 five-year or the ten-year period of time for 13 damages? 14 A No, I did not. 15 Q Were you aware of the fact that Mr. Barger 16 was involved in the search for his successor as 17 early as October of 2014? 18 MR. SHEARER: Objection. 19 A No, I was not. 20 Q Would that have impacted your analysis if 21 Mr. Barger was involved in the search for his 22 successor of determining a period of damages of 23 five years? 24 A As I'm sitting here, I do not know the 25 answer to that. I would have to see what that</p>	<p>28</p> <p>1 guess if you're comfortable with doing a present 2 value analysis and you're comfortable with getting 3 the various interest rate measures and applying 4 them and setting up the appropriate spreadsheet, 5 the answer would be yes. 6 Q On page 4 of your expert report in the top 7 paragraph, you wrote as follows -- and I believe 8 it is the second full sentence, "I have also 9 prepared calculations of loss under the assumption 10 that, in the absence of termination, Mr. Barger 11 receives the same base salary that he was earning 12 at the time of his termination over the remainder 13 of his employment at First Data and that his 14 annual bonuses equal \$250,000 in cash as specified 15 in his offer of employment." 16 Do you see that? 17 A Yes. 18 Q Why do you believe that it was appropriate 19 to assume that Mr. Barger's variable compensation 20 for the remainder of his employment would have 21 equaled his initial variable compensation of 22 \$250,000? 23 A I included that only because -- there was 24 a very short historical period over which he 25 worked at First Data, and the \$250,000 was</p>

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Transcript of Steven J. Shapiro, Ph.D

9 (33 to 36)

Conducted on October 30, 2018

<p>33</p> <p>1 damages calculation?</p> <p>2 A Well, if I assumed a bonus of \$174,000,</p> <p>3 obviously the losses would be lower.</p> <p>4 Q Back on page 4 of your report, and this is</p> <p>5 the last paragraph before we get to number 1. You</p> <p>6 wrote, "I have also prepared calculations of loss</p> <p>7 that assume that Mr. Barger would have received</p> <p>8 salary increases if he had remained employed at</p> <p>9 First Data with bonuses that reflect historic</p> <p>10 bonus activity from 2014 to 2016 or an annual</p> <p>11 \$250,000 bonus that increases over time."</p> <p>12 Did I read that correctly?</p> <p>13 A Yes.</p> <p>14 Q Did Mr. Barger's base salary ever increase</p> <p>15 during his tenure at First Data?</p> <p>16 A It was my understanding it had not.</p> <p>17 Q What is the basis for your assumption that</p> <p>18 Mr. Barger would have received salary increases?</p> <p>19 A Well, the basis for that assumption is</p> <p>20 that if one were computing a loss going forward</p> <p>21 either five or ten years, that to assume -- I</p> <p>22 think it would have been speculative to just</p> <p>23 assume that his compensation would never have</p> <p>24 grown in the future. And by preparing the range</p> <p>25 of compensation numbers that I did, I've covered</p>	<p>35</p> <p>1 A No, I did not.</p> <p>2 Q Is your assumption that Mr. Barger's base</p> <p>3 salary and variable compensation would have</p> <p>4 increased 2.5 percent per year for the remainder</p> <p>5 of his employment consistent with the economic</p> <p>6 evidence that you reviewed in this case?</p> <p>7 A Best answer I could give you is that we</p> <p>8 only had a very short period of time in which --</p> <p>9 in which we have any empirical evidence, and going</p> <p>10 forward -- and going forward I was attempting,</p> <p>11 assuming a longer term horizon where he's employed</p> <p>12 there, to include the average salary increase that</p> <p>13 a professional would be getting on a long-term</p> <p>14 basis based on historical statistics.</p> <p>15 Q What historic statistics did you rely on</p> <p>16 as opposed to the economic data in this case to</p> <p>17 determine that he would have gotten a two and a</p> <p>18 half percent increase in his base and in his</p> <p>19 incentive compensation?</p> <p>20 A I looked at the average salary increases</p> <p>21 based upon the employment cost index for wages and</p> <p>22 salaries for managers in private industry over the</p> <p>23 period from 2001 to 2017.</p> <p>24 Q But I just want to go back to my question</p> <p>25 which I really don't think you answered, which is:</p>
<p>34</p> <p>1 the case where, in fact, it doesn't grow as well</p> <p>2 as the case where it does grow.</p> <p>3 Q But the facts that you had before you,</p> <p>4 which are not speculative, that in 2014 his base</p> <p>5 compensation was \$480,000, correct?</p> <p>6 A That's correct.</p> <p>7 Q In 2015 his base compensation was</p> <p>8 \$480,000, correct?</p> <p>9 A That's correct.</p> <p>10 Q In 2016 his base compensation was</p> <p>11 \$480,000, correct?</p> <p>12 A That's correct.</p> <p>13 Q And at the beginning of 2017, his base</p> <p>14 compensation was \$480,000, correct?</p> <p>15 A That itself.</p> <p>16 Q During that entire time period, there was</p> <p>17 no increase in his base compensation, correct?</p> <p>18 A That's correct.</p> <p>19 Q Did you speak with anybody at First Data</p> <p>20 to determine whether or not there's any basis for</p> <p>21 you to conclude that his compensation would have</p> <p>22 increased over time?</p> <p>23 A No, I did not.</p> <p>24 Q Did you review any documents to validate</p> <p>25 this assumption?</p>	<p>36</p> <p>1 Is there any economic data in this case --</p> <p>2 although you call it a short time period -- but is</p> <p>3 there any economic data in this case that supports</p> <p>4 your assumption that his base salary would have</p> <p>5 increased 2.5 percent a year for the remainder of</p> <p>6 his -- of the damages period?</p> <p>7 A Going back to the previous question, I</p> <p>8 misunderstood your question. I thought you were</p> <p>9 asking me if there was evidence outside of the</p> <p>10 case.</p> <p>11 Q No. What I'm asking you now is: With</p> <p>12 respect to this case and the data that you</p> <p>13 reviewed in this case, the data that you reviewed,</p> <p>14 which is reflected on pages 2 and 3, is there any</p> <p>15 economic evidence in this case that supports your</p> <p>16 assumption that Mr. Barger's base salary and</p> <p>17 variable compensation would have increased</p> <p>18 2.5 percent per year for the remainder of his</p> <p>19 employment?</p> <p>20 MR. SHEARER: Objection.</p> <p>21 A No, because the data covers a short period</p> <p>22 of time in which his salary had not grown.</p> <p>23 Q And that short period of time is from 2014</p> <p>24 to 2017, correct?</p> <p>25 A Yes.</p>

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Transcript of Steven J. Shapiro, Ph.D

11 (41 to 44)

Conducted on October 30, 2018

<p>41</p> <p>1 Q Have you ever mitigated lost wages when</p> <p>2 calculating damages in prior disputes?</p> <p>3 A Yes.</p> <p>4 Q Why is this case different?</p> <p>5 A Well, this case is different only because</p> <p>6 he's tried to mitigate operating a consulting</p> <p>7 business, and based on the evidence that I had, it</p> <p>8 isn't profitable.</p> <p>9 Q Your --</p> <p>10 A Let me finish.</p> <p>11 I have had other cases where individuals</p> <p>12 became self-employed post-termination, did earn</p> <p>13 profits, did earn income from those businesses,</p> <p>14 and if they were positive -- those were positive</p> <p>15 income streams, then I have included them as</p> <p>16 mitigation.</p> <p>17 Q Your damages calculation is effective as</p> <p>18 of when?</p> <p>19 A It's effective -- I was asked to value</p> <p>20 everything as of -- as of the beginning of 2019,</p> <p>21 end of 2018.</p> <p>22 Q Your report was prepared at the end of</p> <p>23 September of 2018, correct?</p> <p>24 A That's correct.</p> <p>25 Q Did you ask for information on what</p>	<p>43</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3 I, STEVEN J. SHAPIRO, PH.D., do hereby</p> <p>4 acknowledge that I have read and examined the</p> <p>5 foregoing testimony, and the same is a true,</p> <p>6 correct and complete transcription of the</p> <p>7 testimony given by me and any corrections appear</p> <p>8 on the attached Errata sheet signed by me.</p> <p>9</p> <p>10</p> <p>11</p> <p>12 (Date) (Signature)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>42</p> <p>1 Mr. Barger's earnings had been for the first nine</p> <p>2 months of 2018 to determine whether or not he was</p> <p>3 turning a profit in his consulting business would</p> <p>4 have impacted the mitigation analysis that you</p> <p>5 did?</p> <p>6 A No, I did not.</p> <p>7 Q Why not?</p> <p>8 A My experience with people operating</p> <p>9 Schedule C small businesses is that generally you</p> <p>10 don't know that until you compile everything at</p> <p>11 the end of the year. Certainly if his</p> <p>12 circumstances were to change based on a 2018 tax</p> <p>13 filing, then I would have to consider that in</p> <p>14 amending my report.</p> <p>15 MR. EIDELMAN: Off the record.</p> <p>16 (A recess was taken.)</p> <p>17 Q I have no further questions. Thank you,</p> <p>18 Dr. Shapiro.</p> <p>19 A Okay.</p> <p>20 Q Dr. Shapiro, you have the right to read</p> <p>21 and sign your deposition.</p> <p>22 A I'll read and sign it.</p> <p>23 (Off the record at 10:38 a.m.)</p> <p>24</p> <p>25</p>	<p>44</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 I, Nancy Mahoney, Certified Court Reporter and</p> <p>4 Registered Professional Reporter and Notary Public</p> <p>5 within and for the State of New York, the officer</p> <p>6 before whom the foregoing deposition was taken, do</p> <p>7 hereby certify that the foregoing transcript is a</p> <p>8 true and correct record of the testimony given;</p> <p>9 that said testimony was taken by me</p> <p>10 stenographically and thereafter reduced to</p> <p>11 typewriting under my direction; that reading and</p> <p>12 signing was requested; and that I am neither</p> <p>13 counsel for, related to, nor employed by any of</p> <p>14 the parties to this case and have no interest,</p> <p>15 financial or otherwise, in its outcome.</p> <p>16 IN WITNESS WHEREOF, I have hereunto set my hand</p> <p>17 and affixed my notarial seal this 31st day of</p> <p>18 October, 2018.</p> <p>19 My commission expires: June 2, 2022</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 NOTARY PUBLIC IN AND FOR</p> <p>25 THE STATE OF NEW YORK</p>

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